

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEVEN RAY SCHILLEREFF,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

Case No. C06-5509FDB

ORDER DENYING
PETITIONER'S MOTION TO
STAY PROCEEDING

The petitioner in this action is seeking federal habeas corpus relief pursuant to 28 U.S.C. § 2254. This case has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636 (b) (1) (A) and 636 (b) (1) (B) and Local Magistrates' Rules MJR 3 and MJR 4. Before the court is petitioner's motion to stay this action and hold it in abeyance while he exhausts state remedies (Dkt. # 6).

Petitioner has informed the court his petition "is only a preliminary skeleton" (Dkt. # 6, page 1). The petition was filed to stop the running of the time for filing a habeas corpus petition (Dkt. # 6).

The United States Supreme Court has recently addressed the stay and abeyance of habeas corpus petitions. Rhines v. Weber, 544 U.S. 269 (2005). A district court has discretion to stay a petition, but the courts discretion has had limits placed on it by the passage of the Antiterrorism and

1 Effective Death Penalty Act, AEDPA.

2 When a petition is stayed the stay must be structured to address the timeliness concerns
3 reflected in AEDPA. A petition should not be stayed indefinitely and limits should be placed on the
4 petitioner. Here, the petitioner asks for an indefinite stay. Petitioner has placed no information as to
5 how long he waited to challenge his conviction and sentence in state court and has not shown there is
6 a danger he will be time barred if this petition is not stayed.

7 The motion is **DENIED**. Petitioner has until November 24th, 2006 to show cause why this
8 petition should not be dismissed as set forth in the court's October 18th Order to Show Cause (Dkt. #
9 7).

10 The Court Clerk is directed to send a copy of this Order to petitioner.

11 DATED this 16th day of November, 2006.

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13 /s/ J. Kelley Arnold
14 J. Kelley Arnold
15 United States Magistrate Judge
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